

Chapter 40

STREETS AND SIDEWALKS*

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*Cross references—Driving livestock through streets, § 6-9; house moving, § 10-48 et seq.; house numbering, § 10-211 et seq.; The Houston International Festival, § 12-81 et seq.; posting advertising matter on curbs, sidewalks, etc., § 28-39; streets in manufactured home parks, § 29-93; walks in manufactured home parks, § 29-94; authority of director of parks and recreation relative to trees on public property, § 32-6; public utilities generally, Ch. 37; railroads, Ch. 38; solid wastes and litter control, Ch. 39; withholding city improvements until plat approval, § 41-6; compliance with subdivision ordinances as prerequisite to city working on streets, § 41-7; pavement assessment lien releases, § 44-20; traffic, Ch. 45; erection of detour or barricade signs, § 45-18; parades and processions, § 45-231 et seq.; vehicles for hire, Ch. 46; transportation of waste, § 47-241 et seq.

ARTICLE I. IN GENERAL

Sec 40-1. Reserved.

Editor's note—Ord. No. 99-379, § 2, adopted April 21, 1999, repealed § 40-1 in its entirety. Formerly, said section pertained to council consent required for street improvements and derived from Code 1968, § 41-1. See the Code Comparative Table.

Sec. 40-2. Survey of sidewalks and fixing of bounds and limits.

It shall be the duty of the city engineer to survey and lay out the several sidewalks along the several streets of the city, and fix the bounds and limits between the sidewalks and the streets. (Code 1968, § 41-2; Ord. No. 90-635, § 96, 5-23-90)

Sec. 40-3. Installation of street lights at expense of property owners.

(a) Where lighting is requested other than that which is scheduled for installation by the city, the mayor is hereby authorized to approve, upon the recommendation of the department of public works and engineering, the installation of ornamental standard type street lights in residential areas when a contribution is made to the city by the property owners of an amount of money sufficient to pay the operation cost of the lights for a period of one year. This section shall also be applicable for ornamental standard type lighting on nonresidential streets where lighting is requested prior to the time it is scheduled by the city. The mayor may delegate such authority to persons named in a written delegation notice signed by the mayor and filed with the city secretary, subject to revocation at any time.

(b) The contributions made to the city whenever ornamental street lights are to be installed shall be in an amount calculated by the department of public works and engineering to represent the operating cost of the street lights for one year. The contribution collected shall be deposited in a special revenue account which is hereby established. The monies collected in the special account shall be designated for street lighting use only. All notices of the amount of contribution due shall clearly state that any contribution not re-

ceived within six months from the date of issuance by the department of public works and engineering shall be subject to increase.

(c) The foregoing requirement for a contribution by property owners shall not apply in the case of standard type ornamental street lights for which the installation charges, if any, plus the estimated operation cost for one year or more are to be paid for out of funds obtained through the Department of Housing and Urban Development of the United States of America as part of the Community Development Block Grant Program. The installation of such street lights may be approved by the mayor (or the mayor's designee) upon the determination by the director of public works and engineering that such funds are available and have been duly authorized to be expended for such purpose.

(Code 1968, § 41-4.1; Ord. No. 70-636, § 1, 5-5-70; Ord. No. 79-962, § 1, 6-14-79; Ord. No. 80-571, § 1, 3-18-80; Ord. No. 82-368, § 1, 3-8-82; Ord. No. 82-906, § 1, 6-1-82; Ord. No. 86-528, § 30, 4-22-86; Ord. No. 90-635, § 97, 5-23-90; Ord. No. 92-1009, § 1, 7-22-92; Ord. No. 93-514, § 67, 5-5-93)

Sec. 40-4. Maps and notice of abandonment.

(a) It is hereby made the duty of every person owning, using, controlling or having an interest in pipes, conduits, ducts or tunnels under the surface of any public street, alley, sidewalk or other public place for supplying or conveying gas, electricity, water, steam, ammonia or oil in, to or from the city, or to or from its inhabitants, or for any other purpose, to file in the office of the city engineer a map or a set of maps, each drawn to a scale of 200 feet to one inch, which map or set of maps shall be on tracing cloth to be furnished in sheets 15½ inches by 23 inches or even multiple thereof, or as may be required by the city engineer, with a border one and one-half inches on the left hand, and shall show in detail the exact location, size, description and date of installation, if known, of all holes, laterals and service pipes, and of all valves, pressure regulators, drips, manholes, handholes, transform chambers or other appliances installed beneath the surface of public streets, alleys, sidewalks or other public places in the city, belonging to, used by or under the control of such person or in which such person has an

interest. It shall also be the duty of every person to file, within 15 days after the first day of January of each and every year, a corrected map or set of maps, each drawn to a scale of not less than 200 feet to one inch, showing the complete installation of all such pipes and other appliances, including all installations made during the previous year, to and including the last day of such year. Each such map shall be accompanied by an affidavit endorsed thereon, subscribed and sworn to by such person, or by a member of a firm, or by the president or secretary of a corporation, to the effect that the same correctly exhibits the details required by this section to be shown thereon.

(b) Whenever any pipe, conduit, duct, tunnel or other structure located under the surface of any public street, alley or other public place, or the use thereof, is abandoned, the person owning, using, controlling or having an interest therein shall, within 30 days after such abandonment, file in the office of the city engineer a statement in writing giving in detail the location of the pipe, conduit, duct, tunnel or other structure so abandoned. Each map or set of maps filed pursuant to the provisions of this section shall show in detail the location of all such pipes, conduits, ducts, tunnels or other structures abandoned subsequent to the filing of the last preceding map or set of maps.

(c) It shall be unlawful for any person to fail, refuse or neglect to file any map or set of maps at the time and in all respects as required by this section.

(Code 1968, § 41-5; Ord. No. 90-635, § 98, 5-23-90)

Sec. 40-5. Minimum depth.

It shall be unlawful for any person to install or cause or permit to be installed any service pipe or main pipe, conduit, duct, tunnel or other structure, or part thereof, except manholes, culverts and catch-basins, in any public street, alley, sidewalk or other public place at a depth of less than two feet below the established grade of the gutter of such public street, sidewalk, alley or other public place.

(Code 1968, § 41-6)

Sec. 40-6. Pipes, conduits, etc., to be laid prior to paving.

All pipes, conduits, tunnels and other structures in or under the surface of public streets, alleys and other public places, shall all be made and laid prior to the paving of such street, alley or public place.

(Code 1968, § 41-7)

Sec. 40-7. Reserved.

Editor's note—Ord. No. 04-498, § 7, adopted May 26, 2004, repealed § 40-7 in its entirety. Formerly said section pertained to obstructions and encroachments generally and derived from Code 1968, § 41-8; Ord. No. 02-974, § 3, 10-30-02.

Sec. 40-8. Sale of goods on streets or sidewalks.

(a) It shall be unlawful for any person to expose for sale or to sell any foodstuffs of any nature, any liquids, or any other goods, wares, or merchandise, either exposed or enclosed in boxes, crates, barrels, baskets or any other container or any animals, on any sidewalk, street, parkway, esplanade or any other public property or any property dedicated to public use.

(b) It is an affirmative defense to prosecution under subsection (a) that the person is selling newspapers in full compliance with the ordinances permitting the sale of newspapers on public property, that the person is operating a sidewalk cafe under a permit issued pursuant to section 40-10.1 of the Code, that the person is acting in compliance with a franchise granted by the city, or that the person is conducting a transaction in a public building or on public property in which transaction the city is a party, or that the person is selling food or non-food merchandise within the "theater/entertainment district" defined in section 40-261 of this Code pursuant to a permit issued under article XI of chapter 40 of this Code.

(c) Except within a "school crossing zone", it is a defense to prosecution under subsection (a) that the person is selling frozen desserts from a sanitary vehicle in full compliance with laws applicable thereto. For purposes of this section a "school crossing zone" means a reduced-speed zone that is designated on a street by ordinance to facilitate

safe crossing of the street by children going to or leaving a public or private elementary school during the times that the reduced speed limit is applicable, provided that the school crossing zone is duly posted by reduced speed signage in accordance with the ordinance applicable to its creation.

(d) It shall be unlawful for any person to cause or aid a minor in conduct prohibited by this section or to provide foodstuffs, liquids or any other goods to a minor with knowledge that the minor intends to sell or offer for sale such goods in contravention of this section.

(e) No provision of section 40-9 or 40-9.1 of this Code shall be construed to authorize sale of frozen desserts in a school crossing zone.

(Code 1968, § 41-10; Ord. No. 69-1122, § 1, 6-25-69; Ord. No. 76-980, § 1, 6-30-76; Ord. No. 76-1191, § 1, 7-14-76; Ord. No. 84-1671, § 1, 10-23-84; Ord. No. 91-1168, § 2, 8-14-91; Ord. No. 97-1004, § 4, 8-20-97; Ord. No. 04-498, § 3, 5-26-04)

Cross reference—Exception to above section for the Houston Festival, § 12-85.

Sec. 40-9. Sale of frozen desserts from vehicles.

(a) A person may sell frozen desserts from sanitary vehicles approved and licensed by the health officer pursuant to this Code, and such other refrigerated vehicles from which are sold or dispensed frozen dessert products that are fully wrapped, enclosed and contained in individual wrappers or containers, provided that such vehicles shall be operated and maintained in full compliance with the health, food, drug and sanitary provisions of this Code and the applicable statutes of the state, and provided further that prior to making a sale or dispensing such frozen dessert products the driver of such vehicle shall drive to the side of the street, as close as practicable to the curb, and if there is no curb, then as close as practicable to the hedge of the paved portion or the edge of the portion used for vehicular traffic of said road, and the driver shall stop, stand or park such vehicle in full compliance with all applicable ordinances of the city and statutes of the state, and particularly ordinances governing the stopping, standing, or parking of vehicles, and such vehicle shall remain so stopped, stand-

ing or parked for no longer than is necessary to make the immediate sale or to dispense such frozen dessert products.

(b) Any truck used for the purpose of selling or dispensing frozen desserts shall be equipped with a sign clearly visible from both the front and rear, mounted on the top of the truck and bearing the warning "CAUTION—CHILDREN." The lettering for such sign shall be block style letters not less than six inches high and one-half inch wide, and such letters shall be black against a yellow background. Flasher-type warning lights displaying yellow to the front and red to the rear and which operate continuously while the truck is stopped for the purpose of making a sale or dispensing frozen desserts shall be installed at each end of the sign. Failure to so equip and maintain such a truck shall be punishable upon conviction by a fine of not less than \$100.00 nor more than \$500.00 and each day's violation shall be a separate offense.

(Code 1968, § 41-10.2; Ord. No. 76-981, § 1, 6-30-76; Ord. No. 92-1449, § 54, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Food and drugs, Ch. 20; assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 40-9.1. Sale of frozen desserts from push carts.

Frozen desserts may be sold upon the sidewalks from non-motorized push cart mobile food units. Each push cart mobile food unit must be operated pursuant to a medallion issued under section 20-37 of this Code. If the mobile food unit does not meet the criteria for restricted operations, as established in section 20-22 of this Code, then the operator shall also obtain a food dealer's permit under section 20-36 of this Code. The provisions of this section do not authorize the operation of a push cart mobile food unit upon the sidewalks in a park as defined in article IX of chapter 32 of this Code or within the "theater/entertainment district," as defined in article XI of this chapter, unless any additional permits, concessions or licenses that are required for operation in those areas are also obtained in full compliance with the aforesaid articles.

(Ord. No. 93-1327, § 3, 10-20-93)

Sec. 40-10. Sale of newspapers on public property.

A person may sell and/or install any nonelectrical apparatuses for the sale of daily or weekly newspapers on sidewalks, or other public property or property dedicated to public use provided, it shall be unlawful for any person to install any apparatus used for the sale of newspapers where such apparatus will impede or interfere with the free passage of persons on sidewalks or other public property. The permission granted by this section shall apply to the extent of the city's right, title and interest only.

(Code 1968, § 41-10.3; Ord. No. 76-1190, § 1, 7-14-76)

Sec. 40-10.1. Sidewalk cafes.

(a) *Purpose.* The purpose of this section is to establish procedures and standards by which persons may use certain city rights-of-way for cafe purposes by means of a license issued under the authority of this section.

(b) *Definitions.* As used in this section, the following terms and phrases shall have the following meanings:

- (1) *Abutting property* shall mean restaurant property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under this section.
- (2) *Application* shall mean that form generally described in subsection (d) which must be completed prior to the issuance of a license hereunder.
- (3) *Canopy* shall mean an awning as defined by the city building code.
- (4) *License* shall mean the written authorization from the traffic engineer granted pursuant to the provisions of this section.
- (5) *Owner* shall include any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole of the land contiguous to the right-of-way on which a sidewalk cafe is to be operated under the authority of this section.
- (6) *Person* shall mean an individual, a group of individuals, an association, a club, a society, a firm, a partnership or a corporation.
- (7) *Public clearance way* shall mean an imaginary three-dimensional shape not less than four and one-half feet and not more than 12 feet high vertically extending in a straight line parallel to the public right-of-way and extending the full and complete width of the property to be used as a sidewalk cafe under the authority of this section.
- (8) *Public street* means the entire width between the boundary lines of every way which is held by the city in fee or by easement or dedication when any part thereof is open to the use of the public for purposes of vehicular travel; provided the term "public street" shall not include any designated state or federal highway or road or any designated county road.
- (9) *Restaurant* shall mean a food service establishment where food is served in individual portions for consumption on the premises as defined by section 20-18 of this Code. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment, all as defined by section 20-18.
- (10) *Roadway* means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two or more separate roadways, "roadway" means each such roadway separately.
- (11) *Sidewalk* shall mean that portion of the public street which is between the curblines, or the lateral lines of a roadway, and the adjacent property lines and which is improved and designed for or is ordinarily used for pedestrian travel.

(12) *Sidewalk cafe* shall mean an outdoor dining area located on a sidewalk and containing removable tables, chairs, planters, or related appurtenances. In no event shall a sidewalk cafe be located on or encroach upon the public clearance way as established by the traffic engineer under the provisions of this section. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy.

(c) *License required.* It shall be unlawful for any person to erect, operate or maintain a sidewalk cafe without first obtaining a license to do so as provided in this action.

(d) *Procedure for issuance of license:*

(1) The traffic engineer is authorized to issue licenses to persons for sidewalk cafe purposes under the procedures established in this subsection. To obtain a license, a person must pay the applicable fee and file an application on a form prescribed by the traffic engineer. As a part of the application the applicant shall provide:

- a. The name and street address of the applicant.
- b. The name and street address of the owner of the abutting property.
- c. A description of the owner, if other than a natural person, including its legal status (i.e., corporation, partnership, etc.) and a general description of the type(s) of business the owner operates on the abutting property.
- d. Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- e. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.

f. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk cafe.

g. The name under which the sidewalk cafe will be operated.

h. The street address and the city food establishment license number of the sidewalk cafe.

i. One or both of the following:

1. A copy of a title policy covering the abutting property and verification by the owner that there has been no change in ownership since the issuance of that policy; or

2. A certified copy or copies of the most recent deed or deeds conveying all or a portion of the abutting property so that ownership of all of the abutting property is accounted for, and verification by the owner or owners that there has been no change in ownership since the date or dates of that deed or deeds.

j. A site plan of legible proportions prepared by a registered public surveyor or professional engineer showing:

1. The entirety of the abutting property of the owner;

2. All contiguous, adjacent properties;

3. All existing sidewalk features including but not limited to utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks, and mailboxes; and

4. Streets for a distance of at least 25 feet on either side of the abutting property.

k. Detailed drawings of legible proportions showing the design, dimension

and proposed location of all temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed public clearance way and the side and front elevations of the proposed sidewalk cafe. In addition to the above-noted drawings the traffic engineer may require detailed drawings at a scale of one-half inch equals one foot showing the front facade of the abutting property and at least ten feet of the first story facade of adjacent buildings.

- l. The seating capacity of the proposed sidewalk cafe and the seating capacity of the restaurant which will be associated with the sidewalk cafe, if any.
- m. A copy or copies of the certificate or certificates of insurance required to be provided under subsection (d)(4).
- n. Written documentation showing that adequate public water and sewer utilities are available to serve the sidewalk cafe.

If the records of the public works and engineering department include existing and apparently valid property boundary data that address a portion of the relevant information specified in part j. above, or if the traffic engineer otherwise determines that survey data is not required in order to determine property boundaries in compliance with this section, then the traffic engineer shall allow the applicant to provide a simplified site plan that need not be prepared by an engineer or surveyor, provided that the site plan is drawn to scale and includes the sidewalk configuration.

- (2) Upon receipt of the application, the traffic engineer shall examine its contents and he shall approve the application if he finds that:
 - a. The application meets the requirements of this section.

- b. The proposed sidewalk cafe would be in compliance with applicable city ordinances.
- c. Given the particular characteristics of the sidewalk upon which the sidewalk cafe is to be located, and of the pedestrian and vehicular traffic in the area, the operation of the proposed sidewalk cafe will not unreasonably interfere with pedestrian or vehicular traffic.
- d. He has determined in writing that:
 1. The improvement or facility will not be located on, extend onto, nor intrude upon any portion of the roadway;
 2. The improvement or facility will not be located on, extend onto, nor intrude upon any portion of the sidewalk which is needed for pedestrian use;
 3. The design and location of the improvement or facility includes all reasonable planning to minimize potential harm or injury to or interference with the public in the use of the public street; and,
 4. The improvement or facility will not create any hazardous condition or obstruction of vehicular or pedestrian travel upon the public street.

Otherwise he shall reject the application. If the application is approved, the traffic engineer shall specifically approve, disapprove or modify the location and dimensions of the public clearance way. If the traffic engineer rejects the application, he shall inform the applicant by notice in writing of his action including the reasons for the action if the application is rejected. Upon rejection of the application a person may modify and refile his application if he so desires or he may, within ten days of the date of the mailing of the notice of rejection, request a hearing before the city planning commission if he believes

his license was unreasonably denied. The applicant's request for a hearing should be made in writing to the director of the department of planning and development as secretary of the city planning commission. A hearing shall then be scheduled in a timely manner before the city planning commission.

- (3) A license granted hereunder shall be valid for a period of one year from the date of its issuance. The licensee is responsible for renewing his sidewalk cafe license prior to that anniversary date. If the licensee does not renew his license, he shall remove all tables, chairs and other appurtenances associated with that sidewalk cafe on or before the expiration date of the license.

- (4) The licensee shall maintain insurance in the following types and amounts:

\$1,000,000.00 combined single limit for bodily injury and property damage, each occurrence, and \$2,000,000.00 annual aggregate.

The city shall be an additional insured on each such policy and such policy shall include a provision to the effect that the city will be notified in writing by the insurance company ten days prior to the cancellation of such policy. The licensee shall then have five days to replace that coverage or the licensee's license shall be deemed revoked without further action on the part of the city. The notice provisions of subsection (d)(7) shall not be applicable for revocation of the license for this reason. THE LICENSEE ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES AGAINST ANY LOSS, LIABILITY OR DAMAGE, INCLUDING EXPENSES AND COSTS FOR BODILY INJURY AND FOR PROPERTY DAMAGE SUSTAINED BY ANY PERSON AS A RESULT OF THE LICENSEE'S OPERATION OF A SIDEWALK CAFE ON PUBLIC PROPERTY.

- (5) A license issued by the traffic engineer shall be subject to the following conditions and may be suspended for failure to comply with them:

- a. The sidewalk shall be kept free of standing water, maintained in good repair and kept free from material defects that may present a hazard to life or property.
- b. No permanent improvement will be installed in or on the sidewalk. All chairs, tables and other appurtenances associated with the sidewalk cafe shall be removable at all times.
- c. A sidewalk cafe license is issued in the licensee's name and can not be assigned, sold, or otherwise transferred.
- d. A sidewalk cafe license is a license for a temporary and interruptible use of a sidewalk. It does not and shall not be construed to convey any legal or equitable interest whatsoever to any part of the sidewalk or public right-of-way.
- e. A sidewalk cafe licensed hereunder shall be subject to an inspection by the traffic engineer or his representatives at any time such an inspection is requested. No notice from the traffic engineer prior to such an inspection shall be required.
- f. The license is granted subject to the availability of utilities and compliance with all other applicable state and city rules and regulations specifically including all food or health-related ordinances of the city.
- g. The sidewalk cafe may never be enclosed by a permanent wall or other temporary or permanent structure or improvement, except that the boundaries of a sidewalk cafe may be delineated through the use of a temporary barrier such as a balustrade, cordon, or railing. Any such temporary barrier must be easily removed and three feet or less in height above

the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the public clearance way as established by the traffic engineer. In addition, a temporary barrier shall not be af-

fixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the traffic engineer. With the approval of the traffic engineer, a licensee may drill holes in the sidewalk to secure those clips or devices to the sidewalk. Those clips or devices shall enable a temporary barrier to be easily attached, detached and removed without the temporary barrier, clips, or devices causing damage to the sidewalk.

- h. A licensee may not obstruct ingress or egress to any other building or business. In addition, all facilities or improvements shall comply with clearances required from structures to utility lines as provided in a nationally recognized building code.
- i. Under no circumstances, shall planters, trees, shrubs, tables, chairs or other such material or appurtenances be allowed in a public clearance way as established by the traffic engineer.
- j. The licensee shall maintain adequate lighting in and around the public clearance way to ensure that all obstructions may be easily seen. Such lighting shall be of such type and location and shall have such shading as will prevent the source of the light from being seen from any contiguous, adjacent residential property. It shall not cause illumination beyond the boundaries of the property on which it is located so as to be obtrusive to adjacent property owners and shall not cause illumination beyond the boundaries of the property in excess of five-tenths footcandle. The illumination of the street from the sidewalk shall be no brighter than the illumination provided by ornamental street lights nor shall it have an adverse impact on the flow of vehicular traffic. In addition, its design and color shall not be such that it could be mistaken for a traffic signal.
- k. The licensee shall not obstruct access to hydrants, street lights, telephones, mailboxes, transit stops, or any other public service facility on the sidewalk or street. City facilities or improvements or public utility facilities and improvements within the public streets cannot and will not be relocated by the city or the licensee as the result of the sidewalk cafe operations.
- l. The licensee shall install and maintain permanent markers in the sidewalk at grade showing the corners of the public clearance way as established by the traffic engineer.
- m. The licensee shall not install, erect or maintain any signs not permitted by the city sign code (chapter 46 of the City of Houston Building Code).
- n. The licensee shall be responsible for supervising the conduct of its patrons and employees.
- o. The licensee shall not serve food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
- p. The licensee shall ensure that the information provided as a part of his application remains true and correct at all times.
- q. The licensee shall not allow the outdoor storage or preparation of food or drink and shall not erect or permit the erection of outdoor waiters' stations.
- r. Under no circumstances shall the licensee place, erect, or construct any structure or sidewalk cafe appurtenance within two feet of the curbline.
- s. The licensee shall obtain and maintain in force a certificate of occupancy for the sidewalk cafe and associated premises.

- t. A sidewalk cafe licensed hereunder may be operated only on the abutting property.
- (6) Failure to observe any of the above conditions shall result in up to a one-year suspension of a sidewalk cafe license. Prior to such suspension the traffic engineer shall give ten days' written notice to the licensee of his violation of or his failure to observe a general condition as set out above. If the licensee requests a hearing prior to the expiration of that ten-day notice period, the traffic engineer shall hold a hearing to determine if the license shall be suspended. The licensee may present evidence in his own behalf if he so desires. The traffic engineer's decision in regard to suspension shall be final. If the licensee fails to request such a hearing, the suspension shall become effective upon the expiration of the ten-day notice period. If operations under a license granted under this section are suspended, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.
- (7) All notices required or permitted under this section shall be in writing and shall be deemed delivered three days after deposit in a United States Postal Service post office or receptacle with proper postage affixed and addressed to the licensee at the street address provided by the licensee (the applicant's name and street address) in his application for a sidewalk cafe license.
- (e) *Operations:*
 - (1) No licensee shall cause, permit or allow the following conditions to exist:
 - a. Preset tables.
 - b. Litter or trash on the sidewalk or street right-of-way.
 - c. Any temporary obstruction in the public clearance way (i.e., ice carts, waiters, chairs, etc.).
 - d. An inadequate number of outdoor trash containers.
 - (2) The traffic engineer is authorized to issue a written notice of violation of any of the conditions noted above. In the event that three such notices are issued for violations of the above provisions, within a one-year period, the traffic engineer shall, after notice to the licensee, hold a hearing to determine if the license shall be revoked. The licensee may submit evidence in his own behalf if he so desires. The traffic engineer's decision with regard to revocation shall be deemed final. If a license granted hereunder shall be revoked, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.
 - (3) In the event that the city health department issues a notice of violation of any of the ordinances of the city to a licensee in connection with the operation or any condition attributable to the licensee's sidewalk cafe, that department shall immediately notify the traffic engineer of the issuance of that notice. Conversely, if the traffic engineer is notified of or becomes aware of any condition or occurrence which may constitute a violation of any food or health-related ordinance, the traffic engineer shall immediately so notify the city health department.
 - (4) In addition to the provisions of subsection (e)(1) hereof, a license shall be revocable without liability therefor if the traffic engineer finds that a public necessity or emergency exists requiring an immediate revocation of the license and termination of operation of the sidewalk cafe or in the event of lawful need for the site or for access thereto by the city or any utility company, in which case the city may remove the facilities on the site or order the licensee to do so. The traffic engineer shall provide written notice to the licensee as promptly as possible. This notice shall state the reason or reasons removal is or was required. Public necessity for these purposes shall include changed circumstances causing increased pedestrian

or vehicular traffic in the area. Notice under this clause shall constitute an exception to the notice provisions of subsection (d)(7).

(f) *Fees and bond:*

- (1) The initial fee for a sidewalk cafe license shall be \$150.00.
- (2) The fee for renewal of a sidewalk cafe license shall be \$75.00.
- (3) The licensee shall also provide a cash bond or a bond with the licensee as principal and a corporate bonding company licensed to do business in the state as surety in an amount determined by the traffic engineer to be sufficient to cover the costs of removal of the licensee's facilities by the city or any public utility under any of the provisions of this section, conditioned that the licensee will timely remove its facilities upon request therefor and will reimburse the city or a public utility in the event that the city or a public utility removes the facilities pursuant to this section. Any licensee who received his sidewalk cafe license hereunder on or before the June 1, 1985, shall have 60 days to provide a bond as required hereunder. If such a licensee fails to deliver such a bond to the traffic engineer, his sidewalk cafe license shall terminate upon the expiration of that sixty-day period.

(Ord. No. 84-1671, § 2, 10-23-84; Ord. No. 84-1888, § 1, 12-5-84; Ord. No. 85-902, § 1, 6-18-85; Ord. No. 86-916, § 1, 6-17-86; Ord. No. 90-635, §§ 99, 100, 5-23-90; Ord. No. 93-514, § 68, 5-5-93; Ord. No. 03-942, §§ 1, 2, 10-15-03)

Sec. 40-11. Reserved.

Editor's note—Ord. No. 04-498, § 7, adopted May 26, 2004, repealed § 40-11 in its entirety. Formerly said section pertained to obstructing sidewalks, with boxes, material, vehicles, etc. and derived from Code 1968, § 41-11; Ord. No. 02-974, § 4, 10-30-02.

Sec. 40-12. Sidewalk access doors.

(a) It shall be unlawful for any person to construct, maintain or operate, or cause or permit to be constructed, maintained or operated, any

sidewalk access door without lifts or chutes, on a sidewalk or street or other public area of the city serving the basement of any building or structure adjacent thereto, without first obtaining from the public works and engineering director a written permit to make such installation. Such permit shall only be issued on a written application in form approved by the city legal department, which shall provide for indemnity to the city for damage to persons or property by reason of such installation. Such application shall be duly acknowledged by the applicant and, where the applicant is not the owner of the abutting property, by the owner of such abutting property, and it shall contain a covenant running with the land, binding the fee owner of the land abutting the installation and on which the sidewalk and installation are constructed, and his heirs and assigns.

(b) Such permit shall require that such sidewalk door shall be opened only between the hours of 10:00 p.m. and 6:00 a.m., so as to impede pedestrian traffic as little as possible. The type of door and the exact location of the door shall be subject to the inspection and approval by the public works and engineering director, and such permit shall be issued subject to all the pertinent requirements of this chapter.

(Code 1968, § 41-12; Ord. No. 90-635, § 101, 5-23-90; Ord. No. 93-514, § 69, 5-5-93)

Sec. 40-13. Reserved.

Editor's note—Ord. No. 04-498, § 7, adopted May 26, 2004, repealed § 40-13 in its entirety. Formerly said section pertained to endangering passage on streets or sidewalks by excavation or material while building or repairing and derived from Code 1968, § 41-13; Ord. No. 02-974, § 5, 10-30-02.

Sec. 40-14. Clearance of tree limbs over sidewalks.

It shall be the duty of the owners and occupants of lots in the city in front of and adjacent to which shade trees are growing in the streets, to keep the same trimmed in such a manner that the limbs and branches of the same overhanging the sidewalks shall be at least eight feet above the ground.

(Code 1968, § 41-15)

Sec. 40-15. Banners and signs prohibited over or across streets.

It shall be unlawful for any person to erect, place, construct or maintain or to permit any premises owned or controlled by such person to be used for the purpose of supporting any banner or suspended sign over or across any portion of a public street in the city, except as provided in sections 40-30 and 40-31 of this Code.

(Code 1968, § 41-16; Ord. No. 85-2072, § 2, 11-27-85; Ord. No. 05-603, § 3, 5-11-05)

Sec. 40-16. Painting or posting house numbers on curbs.

(a) No person, except the abutting property owner, shall paint, print or post any house number upon any curb in any public street in the city unless such person has first obtained a permit from the director of the department of public works and engineering and prior approval from the owner of the abutting property.

(b) To obtain a permit, the applicant must file an application therefor in writing, on a form provided by the city, setting forth his permanent address and the address at which he can be reached. Copies of leaflets or other materials intended to be used in the solicitation of approval of owners or otherwise promoting the painting, printing or posting of house numbers upon curbs shall be submitted for approval with the application.

(c) All leaflets or other materials soliciting approval of owners or otherwise promoting the painting, printing or posting of house numbers upon any curb in any public street shall conspicuously state that neither the city nor any department thereof is engaged in, promotes or is any way connected with such painting, printing or posting of such house numbers, and shall state the name and address of the person or company responsible for such painting, printing or posting. "Conspicuously" as used in this section, shall mean that the words are of such size, type or color that they will be noticed by an average person who reads such leaflet or materials.

(d) The director of the department of public works and engineering shall issue a permit without charge to the applicant unless it is deter-

mined that the applicant has not set forth his permanent address and the address at which he can be reached, or the leaflets or other materials intended to be used in soliciting approval of owners or otherwise promoting the painting, printing or posting of house numbers upon curbs do not comply with the requirements set out in subsection (c).

(e) Said permit shall entitle the holder thereof to paint, print or post house numbers on curbs for a period of one year from the date of issuance of the permit when such painting, printing or posting of house numbers is done in compliance with all applicable laws and ordinances. Upon expiration of the permit, a renewal may be obtained by complying with all requirements for the issuance of an original permit.

(f) Any person, including the abutting property owner, who paints, prints or posts house numbers on any curb of a public street shall do so in compliance with the rules and regulations promulgated by the director of the department of public works and engineering with regard to size, color, location or other matters dealing with the painting, printing or posting; provided, however, any such rules promulgated by the said director shall be in writing and shall be available to the public during office hours in the office of said director.

(g) Neither the provisions of this section nor the granting of a permit in accordance herewith shall be construed to permit the distribution of any leaflets or other materials in violation of any ordinance.

(Code 1968, § 41-17; Ord. No. 76-860, § 1, 5-25-76; Ord. No. 90-635, § 102, 5-23-90; Ord. No. 93-514, § 70, 5-5-93)

Cross reference—House numbering, § 10-211 et seq.

Sec. 40-17. Tearing up, injuring, defacing, etc.—Streets.

It shall be unlawful for any person to wilfully or maliciously tear up, injure, deface or destroy in any manner any paved street or any portion thereof.

(Code 1968, § 41-18)

Sec. 40-18. Same—Sidewalks.

It shall be unlawful for any person to wilfully or maliciously tear up, injure, deface or destroy any sidewalk, or any portion thereof.
(Code 1968, § 41-19)

Sec. 40-19. Removing or defacing street line marks or street name signs.

It shall be unlawful for any person to remove any post, stake or other mark indicating the lines of any street or alley, or pull down, remove or deface any board, sign or plate indicating the name of any street.
(Code 1968, § 41-20)

Sec. 40-20. Removal of street construction materials.

It shall be unlawful for any person to remove any street construction materials, articles or substances placed on or in any street of the city without first obtaining the written permission of the mayor.
(Code 1968, § 41-21)

Sec. 40-21. Mixing mortar or cement on streets.

It shall be unlawful for any person to mix any lime or other mortar or cement upon any of the streets of the city.
(Code 1968, § 41-22)

Sec. 40-22. Moving vehicles which drop or throw mud or clay on streets.

(a) It shall be unlawful for any person to move or allow the moving of, by his agent or employee, upon the streets within the city, any vehicle that drops or throws mud, clay or earth upon the surface of any such streets.

(b) Any person violating this section, upon conviction, shall be punished as provided by section 1-6 of this Code.
(Code 1968, § 41-23; Ord. No. 92-1449, § 55, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Solid waste and litter control, Ch. 39; assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 40-23. Use of unguarded welding apparatus near street or sidewalk.

It shall be unlawful for any person to operate or cause or permit to be operated any electrical welding apparatus or oxyacetylene welding apparatus, which emits a flare or arc within 20 feet of any public street or sidewalk of the city, unless such flare or arc emitted from such welding apparatus is shielded so as to be invisible from the public street and sidewalk.
(Code 1968, § 41-24)

Sec. 40-24. Allowing water to run into or upon streets or sidewalks.

It shall be unlawful for any person to permit the water from any hydrant, fountain or sink, situated upon any premises owned or controlled by such person, to run into or upon any sidewalk or street of the city so as to cause such sidewalk or street to become wet and muddy, or so as to cause a public nuisance.
(Code 1968, § 41-26)

Sec. 40-25. Throwing articles on streets or sidewalks from roofs or upper stories.

It shall be unlawful for any person to throw any article from the roof or an upper story of a house upon any street or sidewalk.
(Code 1968, § 41-27)

Sec. 40-26. Dropping window cleaners' tools on sidewalk.

It shall be unlawful for any person engaged in the washing, cleaning or polishing of any windows upon the outside of any building on, over or abutting any sidewalk in the city to use, handle or have any tool or other equipment for use in such work unless the same is tied, chained or fastened in some suitable manner so that such tool or other equipment cannot fall or drop in, on or upon the sidewalk beneath or adjacent to which such workman is working.
(Code 1968, § 41-28)

Sec. 40-27. Street functions.

(a) It shall be unlawful for any person to use a public street or portion thereof for the purpose of conducting or holding a street dance, block party,

fun run or other pedestrian or wheelchair race, bicycle race, festival, or other function requiring the closing of the street or a portion thereof to normal vehicular traffic, unless the function is being conducted in compliance with a permit issued under this section.

(b) Permits under this section shall be issued by the city's director of public works and engineering ("the director"). In compliance with the procedures set forth in subsection (h), below, the director or hearing officer shall approve the application for a permit unless he determines that the proposed function will unreasonably interfere with the flow of traffic or with the use and enjoyment of properties, whether used for residential, commercial or other purposes, in the vicinity of the function or unless the applicant fails to evidence that it will comply with any of subsections (c) through (g), below. The director or hearing officer may condition his approval upon full compliance with subsections (c), (e) or (g) below if the applicant has not yet provided cost deposits or insurance policies as specified therein. In determining whether the event will unreasonably interfere with the flow of traffic or with the use and enjoyment of properties in the vicinity of the function, the director shall consider:

- (1) The expected general flow of traffic upon the street or streets affected at the time proposed for the event;
- (2) The existence, if any, of alternative routes for public transit vehicles and private vehicles;
- (3) Whether the function will significantly affect the city's ability to deliver police, fire and medical emergency services to the function site and in the vicinity of the function site;
- (4) The availability of public parking, public restroom facilities, public trash receptacles and other amenities in the vicinity where the function will be conducted to accommodate the number of persons that the director or hearing officer expects will attend the function;

- (5) Whether the function will include amplified music or other sound sources that may be expected to create a noise disturbance; and
- (6) The extent, if any, of disruption to the use and enjoyment of residential, business, industrial and governmental facilities located in the vicinity of the proposed function.

In considering the foregoing criteria, the director or hearing officer shall review records, if any, from prior similar events conducted at or near the proposed site, whether conducted by the applicant or others, and the applicant's prior history of compliance, if any, to determine whether there has been a history of traffic control problems, littering and trash removal problems, noise or other disruptions associated with the event or other events conducted by the applicant.

(c) Each application shall be referred by the director to the police chief or his designee for a determination of the peace officer staffing reasonably required to provide traffic control, parking control, public security and crowd control for the function and service calls relating to the function, including not only the street or streets to be closed but any other streets or public areas in the vicinity that may be utilized for alternative routes or for parking of vehicles of persons attending the function. In making the foregoing determination, the police chief shall consider whether alcohol will be served or allowed at the function as a factor in establishing the appropriate staffing level. The applicant must agree to either:

- (1) Pay to the city the salary cost of providing the designated number of peace officers on an overtime basis, in which instance the applicant shall furnish a deposit sufficient to cover the cost of the same at least 72 hours prior to the event; or
- (2) Furnish the designated number of peace officers by providing peace officers paid directly by the applicant or who are willing to volunteer their services to the applicant, provided that no peace officer who is regularly employed by the city may be utilized under this item (2) unless the

officer executes a waiver of compensation from the city for working at the event in a form approved by the city attorney;

provided that, consistent with his analyses of security, traffic and crowd control needs and in order to maintain a command structure for the function, the police chief may require that all or a portion of the designated number of peace officers be on-duty Houston police officers for which the applicant shall make payment to the city under item (1) above.

(d) The applicant must agree to conduct the function in such a manner that at least one lane of the street or streets to be utilized will be capable of being opened at all times for access by persons requiring emergency access to properties abutting the function and by police, fire, ambulance and other emergency vehicles. The applicant must also agree to provide a person on-site during the function to coordinate response activities with city officials. Consistent with the nature and size of the function, the applicant must also agree to provide a public address system for the function site if the police chief or his designee determines that the system is necessary or desirable to facilitate emergency responses during the function.

(e) The director shall establish a plan for the deployment of traffic cones, street barricades and signage as required for the conduct of the function. The applicant must agree to pay the salary costs of providing public works and engineering department employees on an overtime basis as required to deploy and remove the traffic cones, barricades and signage. The applicant must provide to the director a deposit sufficient to cover the cost of the same at least 72 hours prior to the event.

(f) The applicant and any other persons on whose behalf the application is made must covenant and agree that they will, jointly and severally, indemnify and hold the city harmless against liability for any and all claims, judgments and associated legal expenses and costs and for claims and litigation arising out of the function including, but not limited to, those for damage to property or injury to or death of persons. The agreement shall be in a form approved by the city attorney.

(g) The applicant must provide a liability insurance policy covering the function with limits not less than \$100,000.00 for each occurrence of property damage and \$100,000.00 for each person and \$300,000.00 for each occurrence for bodily injury or death. The policy or a binder evidencing the policy shall be furnished at least 30 days prior to the commencement of the event. The policy shall name the city as an insured and be issued by a carrier authorized to transact business in Texas. Each policy shall be reviewed by the city attorney for conformity with this subsection.

(h) Application filing and review generally.

- (1) For purposes of the review of applications under this section, functions are for some purposes classified into two categories:

Major function means any function that will involve the closure of any portion of a major thoroughfare or major collector street, except:

- (i) A function in the nature of a race or fun run in which the participants follow prescribed routes and that is conducted in such a manner that the streets may be closed and opened on a rolling basis as the participants pass; or
- (ii) A function conducted within the "central business district" as that term is defined in chapter 42 of this Code, provided that the function will not cause the closure of any street during the hours of 7:00 a.m. through 6:00 p.m. on any day that is not a Saturday, Sunday or holiday observed by the closure of city offices.

Minor function means any function that is not a major function as defined above.

- (2) Applications for functions shall be filed on a form promulgated by the director. An application for a function may be filed with the director no sooner than one year prior to the commencement date of the function. An application for a major func-

tion shall be filed not less than 120 days prior to the commencement date of the function. An application for a minor function shall be filed not less than 40 days prior to the commencement date of the function, provided that an applicant for a minor function who wishes to retain the right of an appeal to city council shall file an application more than 120 days prior to the commencement date of the function. Applications shall be filed in accordance with forms and procedures promulgated by the director.

- (3) Applications for minor functions shall be considered in accordance with this item. The director shall approve or deny each application for a minor function within 15 days after the completed application is received. In the event that a minor function application is denied, the director shall mail written notice of the grounds to the applicant. A minor function applicant whose application is denied may request a hearing on the matter by filing a written request with the director within ten days following the date the director mails the notice of denial.
- (4) Applications for major functions shall be considered in accordance with this item:
 - a. The director shall review the application and advise the applicant whether it is materially complete and in proper form within 15 days following the receipt of the application. If not, the application shall be returned to the applicant with a written explanation of the deficiencies.
 - b. If the application is determined to be complete and in proper form, the director shall cause notice of the filing to be advertised in one or more of the following manners as determined to be applicable by the director, based upon the nature and location of the major function:
 - (i) Advertisement one time in a newspaper of general circulation and/or in one or more com-

munity newspapers that serve the area where the major function will be conducted;

- (ii) Posting of one or more signs along the major thoroughfare or major collector street where the major function will be conducted; and
- (iii) Furnishing of a written notice by regular mail to the last known address of any person who has in writing requested notice from the director of any permit application for a major function to be held in the vicinity where the major function is proposed to be conducted.

The director may require the applicant to provide or pay for newspaper notices or signs posted and to furnish evidence thereof to the director. The notice(s) shall be in a form prescribed by the director and shall contain the name of the event, date or dates of the event, a city office telephone number that interested persons may call for further information and, except with respect to posted signs, the date, time and place at which the hearing on the application will be conducted. If the applicant fails to promptly give the notices or provide security for the notices following the director's request, the director shall return the application to the applicant.

- c. Following the completion of the publication and/or mailing of the notices, the director shall conduct or designate another person as hearing officer to conduct a hearing regarding the application to determine whether the permit may be issued in compliance with this section. Any person who resides or works or who owns or operates a place of business in the vicinity of the proposed major function and whose interests may be affected by the major function shall

upon request be allowed by the director to intervene and participate in the hearing as a party-intervenor thereto.

- (5) Hearings conducted under this subsection, whether for minor functions under item (3) or major functions under item (4) shall be governed by rules established by the director, which shall be consistent with principles of due process and shall provide that any party may be represented by legal counsel, may call witnesses and provide evidence and may cross examine witnesses. The burden shall be upon the applicant to demonstrate by clear and convincing evidence that the proposed function will comply in all respects with each requirement of this section. The hearing shall be conducted by the director or the hearing officer who shall issue a decision in writing and shall specify the grounds for denial therein if the application is denied. A copy shall be mailed to the applicant and any intervenors. Upon request of the director, the legal department shall act as counsel to the hearing officer.
- (6) Where a right of appeal to city council exists, hearings shall be recorded by a court reporter retained by the director for that purpose. The director may require the applicant to provide security for the cost of recording the testimony as a condition of conducting the hearing. If an application for a major function is denied following a hearing, the applicant may appeal the decision to city council. If the application for a minor function is denied following a hearing, the applicant may appeal the decision to city council if the permit application was filed more than 120 days prior to the commencement date of the minor function. If a major function permit is granted, any person who has been given party status as an intervenor may appeal the decision to city council. Any appeal must be filed with the city secretary within ten days following the date that the director mails notice of the decision to the parties. The appeal shall

be considered on the record as provided in city council rule 12 (section 2-2 of this Code). The cost of the recording and transcription of the record shall be paid by the appellant, and the director or city secretary may require the appellant to provide security therefor as a condition of processing the appeal. Appeals shall be governed by the issuance criteria set forth in subsection (b), above.

- (i) The provisions of this section shall not apply to parades and processions conducted under article IX of chapter 41* of this Code or to functions conducted under the sponsorship of the city, as determined by motion, resolution or ordinance adopted by the city council.

(Code 1968, § 41-29; Ord. No. 75-1945, § 1, 10-22-75; Ord. No. 89-559, § 1, 4-19-89; Ord. No. 89-1741, § 1, 12-6-89; Ord. No. 90-635, §§ 103, 104, 5-23-90; Ord. No. 93-514, §§ 71, 72, 5-5-93; Ord. No. 99-595, § 1, 6-16-99)

*Note—This should read chapter 45.

Editor's note—The City Council finds that the administrative practice of the Director of Public Works and Engineering has been to allow the filing of applications for permits for street functions under section 40-27 of the Code of Ordinances up to one year prior to the date of the event but not earlier and to return those that are sooner filed. This practice is formally adopted in section 40-27. Accordingly, the City Council finds that some permit applications may be on file and in process of issuance or may have been issued for functions to be conducted within one year from the effective date of this Ordinance. [June 16, 1999] The provisions of section 40-27 of the Code of Ordinances, Houston, Texas, as they read prior to their amendment in Section 1 of this Ordinance are saved from repeal for the limited purpose of their continued application to functions to be conducted within one year from the effective date of this Ordinance provided that a completed application has been filed with the director before the effective date of this Ordinance.

Cross reference—Public gatherings in parks, § 32-61 et seq.

Sec. 40-28. Reserved.

Editor's note—Ord. No. 04-498, § 7, adopted May 26, 2004, repealed § 40-28 in its entirety. Formerly said section pertained to street work and removal of manhole covers prohibited between certain hours and derived from Code 1968, § 41-30 and subsequent amendatory ordinances.

Sec. 40-29. Police and fire departments to be notified of street closing.

The director of public works and engineering shall give and direct notices of the closing of any

streets within the city, at least 24 hours before the closing thereof, to the police department and the fire department.

(Code 1968, § 41-31; Ord. No. 90-635, § 106, 5-23-90; Ord. No. 93-514, § 74, 5-5-93)

Sec. 40-30. Banner districts; creation; decorative banners permitted.

(a) *Purpose.* Except as provided in section 40-31 of this Code, the purpose of this section is to allow an electric utility to use its street light standards for the installation of cloth banners to enhance and accentuate the aesthetic appeal of certain areas of the city.

(b) *Definitions.* As used in this section and in section 40-31 of this Code, the following terms and phrases shall have the meanings ascribed to them in this subsection:

Banner shall mean a decorative outdoor display that is placed, erected or fastened to a street light standard owned and maintained by an electric utility as permitted by this section. Banners shall be used for noncommercial or nonpolitical purposes only and shall use a word or words only as a part of an artistic composition.

Banner district means an area designated by the city council pursuant to this section within which the display of banners is permitted.

Electric utility shall mean a franchisee of the city actively conducting an electrical power and lighting business.

(c) *Designation procedure.* A banner district may be designated by the city council in accordance with the following procedure:

- (1) Residents of the city may request that the city council designate any area or areas within the city as a banner district. Any such request must include the specific boundaries of the proposed district to be considered by the city council.
- (2) Following the filing of any such request with the city secretary, the city council shall, within 45 days of the date of filing, conduct a public hearing to consider the merits of the request.

(3) Any interested person shall have the opportunity to participate in any hearing conducted under the provisions of this section and to present any relevant evidence and testimony.

(4) As a result of such hearing, city council shall determine whether or not the area meets the following criteria:

- a. The area has paved public streets with rights-of-way not less than 60 feet wide;
- b. The land use in the proposed district is primarily nonresidential; and
- c. The designation of the proposed district would not endanger the health, safety, welfare and public convenience of the citizens of the city.

(5) Should a majority of the city council decide that the proposed area meets all the above criteria, the council shall designate the proposed area or a portion thereof as a banner district.

(6) Should a majority of the city council decide that the proposed area does not meet the above criteria, the proposed area shall not be designated as a banner district. No subsequent request seeking designation of any area or portion of an area that failed to meet the criteria of this section under a prior request shall be considered by city council until one year has elapsed from the date of the filing of the prior request.

(7) The action of the city council in approving or disapproving the designation of the banner district proposal may be taken by a motion duly adopted by the city council, and no resolution or ordinance shall be required.

(d) *Banners allowed.* An electric utility may place, install, erect or maintain, or cause or allow to be placed, installed, erected or maintained, a banner or banners on street light standards on public streets in a banner district. A banner shall not be allowed to be or become a distraction to drivers, or a traffic hazard, or to obstruct street light illumination to any substantial degree.

(e) *Removal of banners.* A banner shall be immediately removed by the owner of the light standard if the director of public works and engineering finds that a public necessity or emergency exists requiring the immediate removal of the banner. The director may issue a written or oral removal order directed and delivered to the owner. Subsequent to an oral removal order, the director shall issue a written notice to the owner within five days of such oral removal order. Written removal notices hereunder shall specify the reasons for the director's removal order and the duration of that order. The duration of the order shall be for only as long as is reasonably necessary under the circumstances. "Public necessity" for this purpose shall include but not be limited to, a threat to the public health, safety and welfare.

(Ord. No. 85-2072, § 3, 11-27-85; Ord. No. 90-635, § 107, 5-23-90; Ord. No. 91-160, § 1, 2-6-91; Ord. No. 93-514, § 75, 5-5-93; Ord. No. 95-1085, §§ 1—3, 10-11-95; Ord. No. 04-1006, § 2, 9-29-04; Ord. No. 05-603, § 4, 5-11-05)

Sec. 40-31. Special event banners.

(a) *Definitions.* As used in this section, the following terms and phrases shall have the meanings ascribed to them in this sub-section:

Convention means a convention, trade show, corporate meeting or other event scheduled to be conducted at the George R. Brown Convention Center that is anticipated to generate at least 2,000 peak room nights or in excess of 10,000 room nights in hotels located within the city over the course of the event, as determined by the director of the convention and entertainment facilities department.

Special event banner means a banner that, in connection with a convention, may contain a word or words limited to the following: (1) a welcome, (2) the name of the convention, (3) the date of the convention, (4) the location of the convention, and (5) the symbol or logo of the organization whose name is part of the convention name.

(b) *Authorization of display.* Special event banners may be displayed only in connection with a convention, as defined in this section. It shall be

unlawful to display any special event banner without written confirmation by the director of the convention and entertainment facilities department that a convention is scheduled to be conducted.

(c) *Time of display.* Special event banners may be displayed only during the time period that begins ten days before the opening date and ends not more than five days after the closing date of the same convention, provided that in the event of a conflict between two or more conventions that each desire to display special event banners or in the case of a conflict with a display of banners on streets where special event banners are requested, the director of the convention and entertainment facilities shall be authorized to coordinate or alter but not extend the display periods.

(d) *Location of display.* Special event banners may be displayed only on the following specific street segments: Avenida de las Americas from Polk Avenue to Texas Avenue; LaBranch Street from Rusk Avenue to Dallas Avenue; Lamar Avenue from Crawford Street to Avenida de las Americas; Dallas Avenue from Bagby Street to Crawford; McKinney Avenue from Crawford Street to Avenida de las Americas; and Walker Avenue from Avenida de las Americas to Main Street.

(e) *Removal of special event banners.* A special event banner shall be removed immediately by the owner of the light standard pursuant to section 40-30(e) of this Code if the director of public works and engineering finds that a public necessity or emergency exists requiring the immediate removal of the special event banner.

(f) *Biennial review.* On July 1 in each odd year beginning in 2007, the convention and entertainment facilities department will provide the mayor's office with a report reflecting the events for which special event banners have been used during the preceding two year period and, to the extent available, events for which such banners are planned for succeeding years. The reports will include an evaluation of the impact of such banners on attracting and booking conventions together with a discussion of any other benefits or problems associated with use of the special event banners, such as effects on aesthetics surrounding the George R. Brown Convention Center,

attendance at conventions, or assistance to attendees in locating events. The mayor's office will forward the reports to the chair of the appropriate city council committee or committees for review and recommendations for any changes to this section 40-31 of this Code.

(Ord. No. 05-603, § 5, 5-11-05)

Secs. 40-32—40-40. Reserved.

ARTICLE II. PRIVATE STREET WORK IN GENERAL*

DIVISION 1. GENERALLY

Sec. 40-41. Scope of article; definitions.

This article shall control and govern the doing within any street or alley in the city of any of the following work or construction: Any paving, or the construction of any curb or gutter (including driveway construction incident to curb or gutter construction). The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Director* shall mean the director of the public works and engineering department of the city or his duly designated employees.
- (2) *Paving* shall include not only the construction of a concrete roadway or an asphalt or

***Cross references**—Erection of detour or barricade signs, 45-18; driving on fresh pavement, § 45-42.

asphaltic surfaced roadway, but also a shell or gravel roadway or a roadway constructed of any other type whatsoever of road building material.

- (3) *Private street work.* Any and all of the work or construction described in this section (except that which is described in section 40-42) will be meant when the term "private street work" is used in this article or in any application, permit or bond made, issued or given pursuant to the requirements hereof.
- (4) *Street* shall include any public street in the city, including areas shown as such on any subdivision map which has been approved by the planning commission whether or not such map has yet been filed for record with the county clerk of the county in which the subdivision is located; and shall include also any areas shown as such on any map which has been filed with and which is on file with the planning commission for its approval thereof.

(Code 1968, § 41-42; Ord. No. 90-635, § 108, 5-23-90; Ord. No. 93-514, § 76, 5-5-93; Ord. No. 95-104, § 1, 1-25-95)

Sec. 40-42. Exemptions.

(a) Notwithstanding the provisions of section 40-41 of this Code, there shall be excluded from the operation of this article any of the following work, and none of the following work shall require any of the permits, applications or bonds required by this article:

- (1) Work done by city forces (that is, by employees of the city in the course of their employment) or by contractors employed therefor by the city.
- (2) Sidewalks.
- (3) Repair by gas, light or telephone companies of cuts made by them in streets incident to installation or repair of their lines, or ordinary repair made by railway companies within the area between the rails of their tracks or within two feet of the outside of such rails.
- (4) Work which the director or any other officer of the city may, within his authority, duties or powers, direct or order any person to perform.

(b) The foregoing work which is excluded from the application of this article shall remain subject to any and all of the city's present or future ordinances related to any of such work.

(Code 1968, § 41-43)

Sec. 40-43. Minimum standards, drawings and specifications.

(a) There are hereby approved and adopted certain specifications, including certain drawings which have been prepared by the director covering private street work and setting forth in detail the types, sorts, grades and standards of the various materials to be used on the several types and sorts of such work referred to in section 40-41 of this Code, together with the manner, means and methods of the doing of such work. No private street work shall be done in the city except in accordance with such drawings and specifications, or in accordance with drawings, plans and specifications approved by the director which provide for a higher standard of material or work.

(b) Such specifications hereby approved, securely bound together, in two identical duplicate counterparts, bear upon their faces the endorsement of the director identifying them as the specifications which have been prepared by him and submitted to the city council for approval in connection with this article. The city secretary is hereby ordered to likewise identify them under his signature and seal and to file one copy thereof as a permanent record and document in his office and to deliver the other thereof to the director to become a permanent record in his office.

(c) Such minimum standards may hereafter from time to time be amended without other formality than the passage of an appropriate ordinance to such effect, appropriately identifying the new or substituted drawings or specifications, and requiring that the same (appropriately identified as above provided by the signature of the director and of the city secretary) be appended to and made a part of the specifications and drawings hereinabove approved as minimum standards.

(d) The city council hereby approves an amendment to the drawing referred to above (to bear, however, the same drawing number it has in the past), by which there will be eliminated from such

drawing the entire reference therein to "concrete post street name markers" and there will instead be placed upon such drawing an appropriate endorsement to the effect that a street name sign conforming with the requirements of Council Motion No. 5965, 1956, shall be erected at each street intersection and that specifications for the sign and erection method will be available in the office of the director.

Upon a print of such revised drawing, appropriately identified as such, being delivered to him by the director, the city secretary will insert such revised drawing in such specifications as and to become a part thereof, leaving therein, however, the sheet of such drawing as originally contained therein, writing upon such original sheet an appropriate endorsement over his signature to the effect that it has been superseded by the revised drawing.

(Code 1968, § 41-44; Ord. No. 90-635, § 109, 5-23-90)

Sec. 40-44. Stop work orders.

(a) If the director is of the opinion that any work which is being done pursuant to or under color of any permit issued as provided for in this article is not in accordance with the terms of the permit or the plans or specifications therefor, he may direct the person to whom the permit was issued to cease all work on the project until the defaults, errors or omissions specified by him have been remedied. Any person to whom a permit has been issued for the doing of any private street work who, after the director shall have ordered the cessation of work thereupon, shall do any such work or cause or permit any such work to be done (except the remedying of the defects, defaults, or omissions complained of by the director) shall be guilty of an offense. Each day on which any such unauthorized work is performed in violation of an order to cease the work shall constitute a separate offense.

(b) When satisfied that the defaults, errors or omissions specified by him have been remedied, the director shall in writing authorize the resumption of the work. It shall not, in any prosecution for a violation of this section, be necessary that

the complaint negative the issuance of such a resumption order, but the same shall be matter to be shown in defense in any such prosecution.

(Code 1968, § 41-45)

Sec. 40-45. Work beyond scope of permit prohibited.

Any person to whom a permit shall have been issued for the doing of any private street work, as provided for in this article, who shall do or cause to be done any private street work beyond the scope of or not within the permission given by such permit shall be guilty of an offense. Each day on which any such unauthorized work is performed shall constitute a separate offense.

(Code 1968, § 41-46)

Sec. 40-46. Removal of work done without permit.

(a) If any such work is done in any street or alley in the city of any of the sorts described in section 40-41 of this Code, without a permit therefor having been issued as required by this article, the director shall, upon the same being brought to his notice, direct the person who did the work or caused it to be done to forthwith remove all of such work and restore the street or alley in question to the state and condition in which it was before such unauthorized work was done. Such order may include a specific direction as to the things to be done to accomplish compliance with it, including the removal of any earth or any other material which, without authority therefor, may have been placed in any street or alley or any part thereof and the replacement of any earth or any other material which may have been removed therefrom or from any part thereof, and it may state the time within which the things therein ordered shall be done. Such order and direction may be in writing or verbal and may be delivered or given either by the director or by any person thereto instructed by him.

(b) If any person to whom an order has been given under this section shall fail, within the time therein stated, to do or cause to be done all of the things therein commanded and ordered, he shall be guilty of an offense. Each calendar day after the expiration of the time provided in such order

within which any of the work therein commanded to be done remains undone shall constitute a separate offense.

(c) The offense defined in this section shall be a separate and distinct offense from the offense defined in section 40-55 of this Code of having done the work in the first instance without a permit therefor, and a conviction or an acquittal of a charge of the violation of either of such two offenses shall not constitute a bar to a prosecution for a violation of the other of them.
(Code 1968, § 41-47)

Sec. 40-47. Appeal from orders or decisions of director.

In every case in which any person is aggrieved and dissatisfied at any order, decision or direction made or given by the director under any of the provisions of this article, he shall have the same right of appeal therefrom, and to the same effect and result, as is provided in section 40-65 of this Code for appeals from the refusal of the director to issue a permit as under this article.
(Code 1968, § 41-48)

Sec. 40-48. Responsibility for violations.

(a) If any private street work is done without a permit therefor or is otherwise done in violation of this article by a partnership or any other unincorporated association, every member of the partnership or of the association shall be guilty of the violation. If any such work is so done by a corporation, the president of such corporation, the general manager or the person in active charge of its operations or business, and every director of such corporation shall be guilty of the violation.

(b) If any private street work is done in violation of this article by a contractor for another person, the contractor and the person for which the work is being done shall each be guilty of the offense.

(c) Laborers, mechanics, and other craftsmen having no other connection with the doing of the work regulated by this article than to be employed thereupon at a wage or salary shall not be guilty of offenses for work done in violation of this article. It shall not be necessary, however, for a

complaint for a violation of this article to negative the fact that the person complained of is such laborer, mechanic or craftsman, but the same shall be matter to be shown in defense in any prosecution thereunder.

(Code 1968, § 41-49)

Secs. 40-49—40-54. Reserved.

DIVISION 2. PERMIT

Sec. 40-55. Required.

It shall be unlawful for any person to do or cause to be done any private street work for which a permit has not been issued by the director. Each day on which any such work is done without a permit therefor having been so issued shall constitute a separate offense.
(Code 1968, § 41-55)

Sec. 40-56. Application and accompanying documents generally.

(a) Any person desiring to do or to have done any private street work (except construction of curb and gutter only, with incidental driveway construction, as referred to in section 40-57) shall file with the director an application for a permit therefor, which application shall contain the following information and be accompanied by the following documents:

- (1) The name, mailing address, and telephone number of the applicant, together with a statement as to whether the applicant is an individual, a partnership or a corporation, and if a partnership the names of all of the partners.
- (2) A general statement of the location of the proposed work and a general statement of the nature and scope of the work proposed to be done.
- (3) A statement of whether the work has or has not yet been contracted for, and if a contract has been made the name and address of the contractor and the amount of the contract price; but if the work has not yet been

contracted for, then a statement of the applicant's estimate of the probable cost of the proposed work.

- (4) A list sufficient to identify the several sheets of the plans and drawings accompanying the application and the several parts or documents constituting the written specifications under which the work is proposed to be done.
- (5) Complete specifications under which the work is proposed to be done, together with plans and drawings therefor, which shall be in sufficient detail to enable an engineer to determine definitely what is supposed to be done, where it is to be done, and how it is to be done. Such drawings must in any event include a complete profile and a plan on which there is shown the width and other dimensions of any paving, curb or gutter proposed to be built and the location thereof with reference to the center line of any street or streets within which the same are to be placed. Such plan must be "tied" to an established city reference monument, or if there is no city reference monument within a reasonable or practicable distance from the proposed work, then the plan must be tied to some other permanent recognized monument on the ground. If the proposed work is in, or is in connection with, a subdivision which is in the process of development and/or approval by the planning commission, the plan must be appropriately tied to the subdivision map. Such plan or other drawings accompanying the application must show the location of all existing or proposed utility lines, sewer lines, or storm sewers. Every sheet of the drawings and each part or document which is a part of any of the written specifications shall be signed under his seal by a professional engineer duly licensed under the professional engineers licensing law of the state. All of the drawings and written specifications accompanying the application shall be deemed to be a part thereof. Where appropriate and desired, any of the drawings or written specifications herein approved as the city's minimum standards under section 40-43 of this

Code may, by appropriate reference thereto, be included in and made a part of the application without the necessity of attaching the same thereto.

- (6) The name and address of the professional engineer by whom the drawings and specifications accompanying the application have been prepared, together with a statement as to whether or not the actual performance of the work will be under his supervision.
- (7) A statement that if the permit is issued on the application, the proposed work will be done in strict accordance with the plans, drawings and specifications therefor, including amendments and supplements thereto which may be required by the director and agreed to by the applicant before the permit is issued (except for such changes therein as within the general scope, purpose and intent of this article may thereafter be approved in writing by the director).
- (8) The date on which it is desired or intended to commence the work and, if any of the work is to be within an existing traveled thoroughfare, the length of time which the applicant proposes to consume in the doing thereof.

(b) Such application, as well as the drawings and specifications accompanying the same, shall be filed in duplicate and both the original and duplicate original of the application itself shall be signed by or on behalf of the applicant and, unless the engineer responsible for the drawings and specifications is himself the applicant, the application shall include a statement signed by him to the effect that the statements therein made as to his connection and intended future connection with the project are true. If the application shows that the actual performance of the work is to be under such engineer's supervision, and if he shall thereafter cease to be so connected with the project, he shall, within 48 hours after the termination of his connection with it, certify the fact of such termination to the director.

(c) The applicant may either be the person at whose instance or for whose purpose the work is proposed to be done, or a contractor employed or

intending to be employed to do the actual work, or a licensed professional engineer employed to supervise the work. If such licensed professional engineer is himself the applicant, the application shall contain a statement by him that he has been so employed and a statement of the name and address of the person at whose instance or for whose purposes the work is to be done, and he shall sign the application under his official seal. (Code 1968, § 41-56; Ord. No. 95-104, § 1, 1-25-95)

Sec. 40-57. Application when work limited to construction of curbs and gutters.

Any person desiring to do or to have done in the city any private street work consisting of nothing other than the construction of curbs and gutters (including driveway construction incidental thereto), instead of filing the detailed application with accompanying drawings, which is required under section 40-56 of this Code, may simply file with the director an application for a permit for such work, which application shall be sufficient if it shows who desires to do the work, by whom it is intended to be done, and is sufficient to indicate the scope and extent of the work intended to be done. Such application need not include any plans, drawings or specifications, unless a plan or drawing is necessary to the description of the work proposed to be done, and if the work is to be done by a duly licensed and bonded sidewalk and curb and gutter contractor, it need not indicate that any licensed professional engineer has any connection with the project. It shall, however, contain an unconditional undertaking that the applicant will observe and comply with any directions or instructions given him by the director incident to the work or the sufficiency of the completion thereof to the end that, if a permit is issued therefor, the director shall have absolute power to require the applicant to do all of those things and none other than those things which the director considers necessary, incident to the work proposed.

(Code 1968, § 41-57)

Sec. 40-58. Style and numbering of application.

Every application for a permit under this division shall be styled "Application for Permit for

Private Street Work" and, upon filing, shall be appropriately numbered by the director in such manner that future reference thereto by number and style shall be sufficient to identify it.

(Code 1968, § 41-58)

Sec. 40-59. Applicant's bond—Generally.

(a) If the permit application under this division is for the doing of work within the portion of an existing street which is actually being used by the public, no permit shall be issued thereupon until there has been filed with the director a bond to secure the city that the proposed work will be done in accordance with the permit, application and plans and specifications, and securing the city against loss, damage, claim, or liability in connection therewith, which bond shall comply with the following requirements of this section as to the terms, conditions and execution thereof.

(b) The bond required by this section shall be in a penal sum equal to the total estimated cost of the improvements to be constructed (including design and engineering costs) plus an additional ten percent of such amount. No such bond shall be required for work to improve an alley for private access pursuant to section 40-346.

(c) The bond required by this section shall be in favor of and solely and exclusively for the use and benefit of the city.

(d) The bond required by this section shall describe by reference to the number of the application, together with such other brief descriptive matter as is necessary, the work proposed to be done or to be covered by the permit in connection with which the bond is given.

(e) The bond required by this section shall be conditioned that the work therein referred to will be done and performed in strict and full accordance with the terms and provisions of the application and the permit and in strict accordance with the plans and specifications therefor; and that if any of such work is not done in accordance therewith, or if any materials not in accordance therewith are used in the process of such work, such failure and default will be promptly remedied, and any defective material or work torn out and removed or replaced with material and by

workmanship in accordance with the terms of the application, permit and plans and specifications without cost or expense to the city; and that if such is not done within a reasonable time after demand therefor upon the principal by the city, the principal and surety on such bond will (within the penal sum of the bond) be held and firmly bound to the payment to the city of the reasonable cost and expense incurred by the city either in tearing out and removing the defective work entirely and restoring the street to its original state, or in replacing the same with work in accordance with the permit, or in completing and perfecting any work imperfectly or incompletely done; and shall provide that the certificate of the director to the reasonable necessity for and the cost of any work so done by the city shall be conclusive and binding upon the principal and surety in the absence of clear, convincing and unmistakable proof that his action in so certifying is fraudulent, arbitrary or capricious.

It shall further be conditioned that the principal and surety indemnify and agree to fully indemnify and save harmless the city and its officers from any and all demand, liability or claim, no matter by whom asserted, arising from or in any manner incident to the doing of any work pursuant to or under color of such permit or the construction of any of the paving or other street work authorized thereby. It shall, however, provide that the liability of the principal and surety shall not include liability to indemnity against causes of action asserted by persons arising from the grade or location of the pavement or other structure built in the street, or from defects or alleged defects therein occurring or existing after the date of the certificate of acceptance of the work hereinafter provided for.

The principal shall further covenant that if the work is not completed within the required number of days after the commencement thereof, the principal, but not the surety, will be liable to the city on account of and for such delay at the rate of \$150.00 per day for each day that the completion of the work be delayed beyond the time allowed therefor in the permit.

Such bond shall provide that within the general scope and spirit of the work covered by the

permit, the director may without notice to or consent of the surety permit changes in the actual plans and specifications therefor, without in any wise affecting the liability either of the principal or surety.

(f) Such bond shall be upon a form to be prepared and approved by the city legal department and may be executed by the applicant or by the contractor proposing and intending to do the actual work, or if the application is not made by the person at whose instance or for whose purpose the work is proposed to be done, such person may nevertheless execute such bond as principal. It shall be executed also by one corporate surety, which surety shall be a corporation qualified and licensed by the insurance licensing authority of the state under and pursuant to the provisions of articles 4969 to 4972, inclusive, of the Texas Revised Civil Statutes.

(g) If the surety on such bond is a company appearing on the then current list of approved sureties of the United States Treasury Department, the bond need not be accompanied by any proof of the qualification and license as aforesaid of such company, but if such bonding company's name does not appear upon such treasury department's current list there shall be submitted, along with the bond, a certificate from the board of insurance commissioners of the state, bearing date no more than ten days prior to the date of the bond, evidencing the fact that such surety is so qualified and licensed by the state. Such bond shall in any event be accompanied by an appropriate power of attorney evidencing the authority of the issuing agent or attorney to execute the bond for the company.

(h) A bond upon such form so executed shall be accepted on behalf of the city by the director, and his acceptance noted thereupon. If he is in doubt as to the manner or form of the execution thereof, he may submit the same to the city legal department for its approval as to form and execution before he accepts it. Such bond, together with the proof of the authority of the agent to execute the same, and the proof of the surety's qualifications and license if the surety is not on the treasury department's current list, shall be attached to the

city's duplicate original of the permit and become a part of the permanent record in connection therewith.

(i) When the work covered by the permit has, in the opinion of the director, been completed in substantial accordance with the plans and specifications therefor, the director shall, at the request either of the principal or of the surety on such bond, deliver to either or both of them a certificate to such effect. Such certificate shall, in favor of the surety upon such bond, be conclusive proof of the contents thereof, but shall not relieve the principal upon the bond from liability for failure of or defect in the work arising from failure to have fairly and substantially complied in any material respect with the specifications.

(Code 1968, § 41-59; Ord. No. 99-379, §§ 4, 5, 4-21-99)

Sec. 40-60. Same—Cash deposit in lieu of bond.

In any instance in which, by the provisions of section 40-59 of this Code, a bond is required to be given, there may instead be deposited with the director in cash an amount equal to the required penal sum of the bond, which deposit shall secure the city to the same purpose, intent and effect as the bond prescribed by section 40-59 of this Code. When the director is of the opinion that the work has been completed in accordance with the plans and specifications, he shall so certify as provided in section 40-59 of this Code and the deposit referred to shall be returned to the applicant or upon the applicant's order.

(Code 1968, § 41-60)

Sec. 40-61. Same—Bond or cash deposit for curb and gutter work only.

The bond required in connection with any permit for curb and gutter work only, issued as provided in section 40-64 of this Code, shall be conditioned and executed in accordance with the requirements of section 40-59 of this Code, and shall be in such amount as the director considers necessary to protect the city against having to go in and finish up or undo work begun or done under the permit. Any person to whom such a permit is to be issued may, instead of furnishing

such bond, deposit with the director in cash the amount so deemed necessary by the director, to be returned to the applicant after the work has been completed to the satisfaction of the director, or upon surrender of the permit before commencing any work thereunder. If the work is to be done by a duly licensed and bonded sidewalk and curb and gutter contractor, no separate bond shall be required under this division or any cash deposit in lieu thereof.

(Code 1968, § 41-61)

Sec. 40-62. Fees.

(a) No fee shall be charged upon any permit or application for the construction of any pavement (including curb and gutter construction incident thereto) which includes a reinforced concrete base, the city council here declaring that the advantage and benefit to the city from the construction of that type of pavement is such as to fully warrant the handling by the city, without cost to the person having such work done, the necessary application, investigation, inspection, etc. Upon permits for other paving work or for curb or gutter construction as governed by this article, fees are hereby fixed and established as follows, to be collected by the director before the permit is issued:

- (1) For curb and gutter (or either), a permit fee of \$0.05 per lineal foot of the curb and gutter (or either) to be constructed, but excluding from the computation so much thereof as is within the intersection of any two streets.
- (2) For any pavement (except pavement involving a reinforced concrete base) a fee at the rate of \$0.10 per running or lineal foot of street to be paved, but excluding from the computation such work as is to be done within the intersection of any two streets.
- (3) When the pavement is to be constructed without curb or gutter, the fee charged shall be only the fee of \$0.10 per running foot for the pavement as provided above, but where pavement is with curb and

gutter, the fee charged shall be \$0.10 per running foot of pavement plus \$0.05 per lineal foot of curb and gutter.

(b) The minimum fee, where any fee at all is required by the terms of this section, shall be \$5.00 upon any one permit.

(c) The fees prescribed by this section are established to cover the expense or a part of the expense to the city incident to the examining of the application, investigation in connection therewith, the inspection of the work as the work progresses.

(Code 1968, § 41-62)

Cross reference—Refund of permit fees paid to department of public works and engineering, § 2-285.

Sec. 40-63. Issuance or refusal generally.

(a) If the director finds that the plans and specifications for the proposed work for which a permit is sought under this division are sufficient and are in accordance with the purpose, intent and provisions of this article, he shall notify the applicant, and subject to the provisions of this division he shall issue and deliver to the applicant a permit for the work desired to be done in accordance with the provisions of this article.

(b) If the plans or specifications for work for which a permit is sought under this division are not sufficient or do not contemplate or describe work in accordance with the city's minimum standards or are not adequate to the place and purpose in question, the director shall communicate to the applicant or to the applicant's engineer his objections thereto, permitting and agreeing to such changes in the original drawings and specifications as may be sufficient to meet his objections and after such changes have been agreed to by the applicant and by the applicant's engineer, the director shall, subject to this division, issue the permit.

(c) The director shall not, in any event, issue a permit for the construction of a pavement which includes curb and gutter or curb, unless suitable and sufficient drainage and drainage facilities are already in existence, or the construction thereof is provided for in the plans and specifications for the work covered by the application. Similarly, he

shall not issue a permit upon any application which contemplates pavement of a general sort or type (including width thereof, thickness and reinforcing thereof) which, in his opinion, is inadequate or unsuitable to the area or place where it is proposed to be placed, notwithstanding that the same, as applied for, is in accordance with the minimum standards approved by this article.

(d) If the plans and specifications (with such changes therein as have been required by the director and approved by the applicant and the applicant's engineer) do not meet the standards and requirements set up by this article, the director shall refuse to issue the permit applied for and shall, upon the duplicate original of the application or a paper attached thereto and suitably identifying the application, certify the fact of his refusal, together with such statement as he sees fit to make of the reasons therefor, notifying the applicant or the applicant's engineer to such effect and delivering such duplicate of the application with his certificate of rejection to either of them who may request it. At the same time, he shall similarly certify the fact of his refusal upon the other original of the application, which shall

remain as a permanent file and record in his office.

(Code 1968, § 41-63)

Sec. 40-64. Issuance for curb and gutter work.

Upon an application under section 40-57 of this Code for curb and gutter work, the director shall make such investigation and inquiry as he deems necessary, and if it appears to him that the work referred to may be done without damage or injury to the street or to the rights of any other abutting property owners or of any other person who may have any interest or right related thereto, he shall grant a permit therefor. The procedure in the matter of actual issuance of such permit, retention of the identical duplicate thereof and numbering and identification thereof shall be the same (except as herein expressly provided otherwise) as that provided in this division for other permits.

(Code 1968, § 41-64)

Sec. 40-65. Appeal from refusal.

(a) If the director refuses to issue a permit applied for under any provision of this division, the applicant may, within 30 days after such refusal is communicated to him, appeal therefrom to the city council without other formality than filing with the city secretary a letter in duplicate signed by the applicant sufficient to show the fact of the refusal of his application, the reason (if any) stated therefor by the director, and the applicant's desire to appeal from such refusal to the city council. The city council shall thereafter, upon such investigation and the hearing and considering of such evidence as it deems proper, either sustain or overrule the director's action, by motion, resolution or ordinance. If the council overrules the director, he shall thereupon issue the permit, noting thereon and on the city's duplicate original thereof, the fact that it is issued pursuant to council's action in overruling his refusal to grant it in the first instance.

(b) The action and decision of council shall be final; provided, the city council shall not order the issuance of a permit for any street work providing for the doing of work of a sort which is not adequate and suitable for the place to which and the

purpose for which it is proposed to be done, taking into consideration the public welfare and safety, and the nature and density of traffic which may be expected to use the street in question.

(Code 1968, § 41-65)

Sec. 40-66. Contents.

A permit issued under this division shall state that the applicant (or the applicant's engineer) must notify the director when the work is commenced. If the application includes any work to be done within an existing traveled thoroughfare and is of a sort which, in the director's opinion, will interfere with or inconvenience the public while the work is in progress, then the permit shall state that the work must be completed within the length of time, after the commencement thereof, stated by the applicant as required by paragraph (8), subsection (a), of section 40-56 of this Code.

(Code 1968, § 41-66)

Sec. 40-67. Permit for work in subdivision in advance of plat approval.

Any person intending to subdivide or develop as a subdivision any unplatted area within the city, in advance of submitting his proposed plat to the planning commission may, if he desires to do any of his street development work, make an application to the director containing those essentials which are stated in section 40-56 of this Code, and the director may, upon his approval of the proposed work and the payment of the fees required by this division, issue a permit therefor in all respects the same as if the work were to be done on a street as defined in section 40-41 of this Code, but the issuance of such permit shall not constitute an approval of any proposed plan or plat of the addition, and shall in no manner interfere with the right of the planning commission to withhold its approval thereof or to require changes therein before the same is approved.

If any person shall do any such work in any such area without first having obtained the permit herein provided for, the planning commission shall not thereafter approve the plan of such subdivision until there is furnished to it a certificate by the director that all of the street work in such subdivision is in accordance with standards which

are at least equal to the minimum standards provided in this article and are of a sort which the director would have issued a permit if one had been applied for.

(Code 1968, § 41-67; Ord. No. 95-104, § 1, 1-25-95)

Sec. 40-68. Effect of acceptance.

(a) Any person to whom a permit is issued pursuant to any of the provisions of this division will, by his acceptance of such permit (which acceptance shall be conclusively presumed if, after the permit is issued, he does any of the work contemplated or provided for in the application), undertake or promise that the work covered by the permit and application will be done in full and exact accordance with the provisions of the application and of the plans and specifications, if any, therefor, and that no other work than that covered by the permit will be undertaken pursuant thereto. He will further thereby agree that, during the course of the work, every instruction and order of the director, or of any inspector or other city employee delegated thereto by the director, for stopping any work which is being done in a manner contrary to the plans and specifications or the application, correcting and replacing any work not in compliance therewith or completing any work necessary to accomplish compliance therewith, will be promptly and immediately observed.

(b) Without limiting the obligation of the applicant to faithfully adhere to the plans, drawings and all of the specifications, he will, by the acceptance of a permit, particularly undertake that no materials will be used in the work except those which, under the appropriate provisions of the city's minimum standard of specifications, have been tested and approved by an approved testing laboratory as therein provided; and that if any materials not so tested and approved are used, he will, upon such violation being discovered by him or brought to his notice, promptly remove and tear out the work in which such untested or unapproved materials were used and replace the same by work of proper, tested and approved materials. (Code 1968, § 41-68)

Cross reference—Subdivisions, Ch. 42.

Sec. 40-69. Issuance does not impose liability on director or city.

By virtue of the issuance of any permit required by this division neither the director nor the city

shall be or become liable or responsible in any way either to the applicant, the contractor, if any, for the work, or to any other person for the sufficiency, correctness or suitability of the plans or specifications or the project itself, and the work done pursuant to such permit shall be the private venture, work and responsibility of those interested in it, and the city shall not be liable directly or indirectly to any laborer or workman employed thereupon or to the furnisher of any materials for use therein, or to any person having a cause of action arising directly or indirectly from the doing or prosecution of the work or the construction of the pavement or other facilities accomplished thereby.

(Code 1968, § 41-69)

Sec. 40-70. Issuance does not constitute approval of subdivision or acceptance of streets and alleys therein.

If a permit issued under this division is for work in a subdivision not yet approved by the planning commission, the issuance of the permit shall not constitute an approval of the subdivision or an acceptance of streets or alleys shown on the subdivision map, and neither the city nor the planning commission shall be in any way estopped by virtue of the issuance of such permit.

(Code 1968, § 41-70)

Sec. 40-71. Records to be kept.

If the director issues a permit under this division, including the issuance of a permit pursuant to council action as provided in section 40-65 of this Code, he shall attach to the city's original of the application the bond, if required under this division, filed with and approved by him, together with an exact copy of the permit, signed by him, and such duplicate of the permit, such bond and the entire application therefor shall be and continue a permanent file and record in his office.

(Code 1968, § 41-71)

Secs. 40-72—40-81. Reserved.